



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 9, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0089

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111816.

The Texas Department of Public Safety (the "department") received a request for information related to a speeding citation, including information concerning radar equipment, and the personnel files of the issuing officer and his supervisor. In response to the request, you submitted to this office for review a representative sample of the information which you contend is responsive.¹ You claim that the requested information is excepted from disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the sample of documents that you have submitted.

First, we address your assertion that section 552.103 of the Government Code excepts the requested information. Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

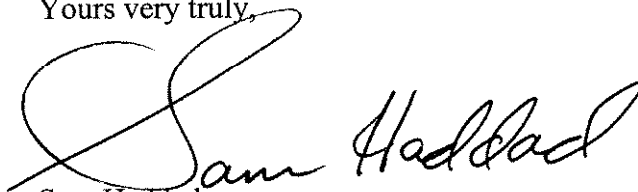
The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that "since the State will be engaged in criminal litigation concerning this citation, the requested information is exempt from disclosure pursuant to Section 552.103." You explain that the department has spoken to the justice of the peace who has advised that a jury trial has been requested by the requestor. In addition, you state that the assistant county attorney for Liberty County, who is representing the state in the matter of the speeding violation, has asked that the requested information be withheld. You have shown that litigation is pending. We also find that the requested documents relate to the litigation. Therefore, you may withhold the requested information under section 552.103.

We note, however, that information normally found on the front page of an offense report is generally considered public and may not be withheld under either section 552.103 or 552.108. Gov't Code § 552.108(c) (basic information about arrested person, arrest, or crime is not excepted from required public disclosure under section 552.108); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. See *Houston Chronicle*, 531 S.W.2d at 187; cf. Open Records Decision No. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103); see also Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Additionally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a). We therefore conclude that, except for front page offense report information and information seen by the opposing party, section 552.103 of the Government Code excepts the requested records from required public disclosure.

As we resolve your request for a ruling under section 552.103, we do not consider your additional argument under section 552.108 at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" that loops around the first part of the name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 111816

Enclosures: Submitted documents

cc: Mr. Mike Glenn
Rt. 2, Box 338
Sulphur Springs, Texas 75482
(w/o enclosures)